?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 31.10.2018
*CORAM
THE HON-BLE MR. JUSTICE T.RAJA
and
THE HON-BLE MR. JUSTICE KRISHNAN RAMASAMY
+W.P.(MD) No.22209 of 2018
and
W.M.P.(MD) Nos.20139 and 20140 of 2018

#P.Muthukumar ... Petitioner

Vs.

$1.The Commissioner,
Hindu Religious and Endowment Department,
No.119, Uthamar Gandhi Road,
Thirumurthy Nagar,
Nungambakkam,
Chennai ? 600 006.

2.The Joint Commissioner,
Hindu Religious and Endowment Department,
Suchindram,
Kanyakumari District.

3.The Manager,
Arulmigu Bhagavathyamman Thirukoil,
Kanyakumari,
Kanyakumari District. ... Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in K.No.29/2018, dated 20.10.2018 on the file of the respondent No.3 and quash the same as illegal and consequently direct the respondent Nos. 1 to 3 to permit the petitioner to occupy the area of 100 sq.ft. in the backside of the shop to an extent of 177 sq. ft. in Shop No.1~4j, 4~3, Sannathi Street, Kanyambalam, Kanyakumari District.

!For Petitioner : Mr.M.Mehboob Fazil
for M/s.T.Lajapathi Roy

^For Respondent 1 : Mr.V.R.Shanmuganathan
Special Government Pleader

For Respondents : Mr.K.Sathiya Singh

2 and 3
:ORDER

(Order of the Court was made by T.RAJA, J.)

This Writ Petition is directed against the impugned order dated 20.10.2018 issued by the third respondent calling upon the petitioner to remove the encroachment within seven days.

2.The learned Counsel appearing for the petitioner submitted that the Manager of Arulmigu Bhagavathyamman Thirukkoil has no jurisdiction to issue the notice. He further submitted that the Joint Commissioner, Hindu Religious and Charitable Endowments Department, had originally allotted 77 sq. ft. of land to the petitioner that could be seen from the proceedings dated 22.01.2010 issued by the Manager of Arulmigu Bhagavathiamman Thirukkoil, Kanyakumari. Subsequently, when a representation was made by the petitioner to allot more extent of land, a resolution was passed on 11.07.2017 bearing No.3151 and based on the said resolution, the petitioner was allowed to enjoy 177 sq. ft. of land as per the proceedings dated 11.07.2017 passed by the Joint Commissioner/Executive Officer, Hindu Religious and Charitable Endowments Department. Therefore, the impugned notice is liable to be set aside, he pleaded.

3.Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the first respondent submitted that even if the petitioner is not complying with the direction issued in the impugned notice, the Manager of Arulmigu Bhavathiamman Thirukkoil will have to write to the Joint Commissioner who will in turn appoint the Assistant Commissioner to examine the matter and submit a report and based on the report submitted by the Assistant Commissioner, the Joint Commissioner will take a final decision by holding an enquiry and then pass an appropriate order.

4.The learned Standing Counsel appearing for the respondents 2 and 3 submitted that it is not an order granting 177 sq. ft. of land to be enjoyed by the petitioner but it is allotted to the petitioner only for the purpose of carrying out maintenance. The Joint Commissioner as Executive Officer of Arulmigu Bhagavathiamman Thirukkoil has issued the proceedings that will not confer any right on the petitioner to claim that he is entitled to encroach 177 sq. ft. This could be seen from the proceedings dated 20.10.2018 that the petitioner was originally allotted only 77 sq. ft. and in excess of 77 sq. ft. namely 100 sq. ft. of land the petitioner is not entitled to. Therefore, this matter ought to be looked into by the Joint Commissioner.

5.As rightly pleaded by the learned Special Government Pleader appearing for the first respondent, the Joint Commissioner also in the event of any dispute has to obtain a report from the Assistant Commissioner, H.R. & C.E., as per Section 78 of the Hindu Religious and Charitable Endowments Act, 1956 and only on the basis of the report submitted by the Assistant Commissioner, the Joint Commissioner will take final decision. Therefore, it is too early for the petitioner to approach this Court. Hence, this Writ Petition fails and accordingly the same is dismissed. However, the

petitioner is entitled to make a representation to the Joint Commissioner against the impugned proceedings and if any such representation is made by the petitioner, the Joint Commissioner shall consider the same and pass appropriate orders on merits and in accordance with law. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

To

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2.The Joint Commissioner,
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